

FILED

NOV 04 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI, State Bar No. 206911
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2541
Facsimile: (213) 897-2804
6
7 Attorneys for Complainant

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC**
11 **TECHNICIANS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 MICHAEL KARL ALMAZAR
855 West Avenue J10
13 Lancaster, CA 93534
Vocational Nurse License No. VN 216378

Case No. VK-2005-2510

ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
19 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
20 Nursing and Psychiatric Technicians, Department of Consumer Affairs (Bureau).
21 2. On or about August 11, 2005, the Bureau issued Vocational Nurse License
22 No. VN 216378 to Michael Karl Almazar (Respondent.) The Vocational Nurse License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on October
24 31, 2008, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Director of Consumer Affairs
27 (Director) for the Bureau, under the authority of the following laws. All Section references are to
28 the Business and Professions Code unless otherwise indicated.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

28

1 8. Section 477 states:

2 As used in this division:

3 "(a) "Board" includes "bureau," "commission," "committee," "department,"
4 "division," "examining committee," "program," and "agency."

5 "(b) "License" includes certificate, registration or other means to engage in a
6 business or profession regulated by this code."

7 9. Section 490 provides, in pertinent part, that the Board may suspend or
8 revoke a license when it finds that the licensee has been convicted of a crime substantially related
9 to the qualifications, functions or duties of a licensed vocational nurse.

10 10. Section 2875 provides, in pertinent part, that the Board may discipline the
11 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
12 section 2875) of the Vocational Nursing Practice Act.

13 11. Section 2878 states, in pertinent part:

14 "The Board may suspend or revoke a license issued under this chapter [the
15 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)) for any of the following:

16 "(a) Unprofessional conduct,

17

18 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
19 abetting the violating of, or conspiring to violate any provision or term of this chapter.

20

21 "(f) Conviction of a crime substantially related to the qualifications, functions,
22 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
23 conclusive evidence of the conviction. . . ."

24 12. Section 2878.5 states, in pertinent part:

25 In addition to other acts constituting unprofessional conduct within the meaning
26 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
27 licensed under this chapter to do any of the following:

28

1 "(b) Use any controlled substance as defined in Division 10 of the Health and
2 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
3 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
4 or to the extent that the use impairs his or her ability to conduct with safety to the public the
5 practice authorized by his or her license.

6 "(c) Be convicted of a criminal offense involving possession of any narcotic or
7 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
8 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
9 conclusive evidence thereof.

10 13. Section 2878.6 states:

11 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
12 made to a charge substantially related to the qualifications, functions and duties of a licensed
13 vocational nurse is deemed to be a conviction within the meaning of this article. The board may
14 order the license suspended or revoked, or may decline to issue a license, when the time for
15 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
16 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
17 order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
18 his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information or indictment."

20 14. California Code of Regulations, title 16, section 2521 states:

21 "For the purposes of denial, suspension, or revocation of a license pursuant to
22 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
23 act shall be considered to be substantially related to the qualifications, functions or duties of a
24 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
25 licensed vocational nurse to perform the functions authorized by his license in a manner
26 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
27 limited to those involving the following:

28

“(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

COST RECOVERY

15. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

16. Respondent is subject to disciplinary action under sections 490 and 2878, subdivision (f), as defined in California Code of Regulations, title 16, section 2521, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a licensed vocational nurse as follows:

a. On or about May 30, 2006, Respondent pled nolo contendere to one misdemeanor count of violating Vehicle Code section 23152(b) [driving a vehicle with a blood alcohol level greater than .08%] in a criminal proceeding entitled *The People of the State of California v. Michael Karl Almazar* in the Superior Court of California, County of Los Angeles, Case No. 6MP05339-01.

b. On or about February 7, 2006, Respondent pled nolo contendere to one misdemeanor count of violating Vehicle Code section 23152(b) [driving a vehicle with a blood alcohol level greater than .08%] in a criminal proceeding entitled *The People of the State of California v. Michael Karl Almazar* in the Superior Court of California, County of Los Angeles, Case No. 5AT09959.

SECOND CAUSE FOR DISCIPLINE

(Conviction of Crimes Involving Use of Alcohol)

17. Respondent is subject to disciplinary action under section 2878, subdivision (a), in conjunction with Section 2878.5, subdivision and (c), on the grounds of

unprofessional conduct, in that on or about February 7, 2006 and again on May 30, 2006,
Respondent was convicted of crimes involving alcohol as further described in paragraph no. 16.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

18. Respondent is subject to disciplinary action under section 2878, subdivision (a), in conjunction with section 2878.5, subdivision (b), on the grounds of unprofessional conduct, in that on or about February 7, 2006 and again on May 30, 2006, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any other person, or the public as further described in paragraph no. 16.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director issue a decision:

1. Revoking or suspending Vocational Nurse License No. VN 216378;
2. Ordering Respondent to pay the Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: November 4, 2008



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Bureau of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California

Complainant

60338717.wpd

LA2007601787